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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/763,159
Filing Date: January 26, 2004
Appellant(s): SHIMIZU, HIDEAKI

Joseph S. Presta, Reg. No. 35,329
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/5/2009 appealing from the Office action mailed 6/10/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Pub. No. 2003/0181241
Oakes et al.
Pub. Date 9/25/2003

Patent Number 5,356,156
Suzuki et al.
Date of Patent 10/18/1994

Patent Number 5,879,235

Kaneko et al.
Date of Patent 3/9/1999

Patent Number 6,608,633
Sciammarella et al.
Date of Patent 8/19/2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1,148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 4, 5, 7, 11, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oakes et al. (US Patent Application Publication 2003/0181241;

hereinafter Oakes) in view of Suzuki et al. (US Patent 5,356,156; Suzuki). Features are described by figures with reference characters where necessary for clarity.

Regarding claims 1,11,12, Oakes discloses a game apparatus, system and storage method used in association with a display, wherein a plurality of players participate and play a game on a display screen displayed on said display (Fig. 1), said game apparatus comprising one or more game program storage areas for storing a game program (Fig. 5), an operating member operated by the player (game controller 242, 1[0028]), number of players detection programmed logic circuitry for detecting the number of players who participate in the game, a screen partitioning programmed logic circuitry for partitioning a display area included in said display screen by the number of the participating players and forming a plurality of divided areas (as shown in Fig. 6; Fig. 7A step 752 wherein each remote unit, i.e. player controller, is assigned a window; 1[0052-0053], and game image generating programmed logic circuitry for generating game images in each of said divided areas allotted to each player based on said game program and an operation from said operating member (1[0063).

Specifically, Oakes discloses a gaming system wherein multiple players utilize remote controller units in order to play a game. Each remote control unit is assigned to a portion, i.e. window, of a common display screen wherein gaming data for a given player is displayed in said window and all of the windows are displayed simultaneously on the common display screen.

Oakes does not specifically disclose evaluating value setting programmed logic circuitry for setting an evaluating value of each player based on how well each player is doing in the game relative to the other players and size changing programmed logic circuitry for changing a size of said divided areas allotted to each player based on said evaluating value. Instead, Oakes discloses that the display screen is divided equally

among the players as described above. However, Oakes does specifically disclose that the size of the display windows may be adjusted (I[0055-0057).

In an analogous multi- player video game system, Suzuki discloses evaluating value setting programmed logic circuitry for setting an evaluating value of each player based on how well each player is doing in the game relative to the other players and changing a size of said divided area based on said evaluating value. That is, Suzuki evaluates a player to determine if the player is in an offensive, i.e. superior, situation or defensive, i.e. inferior, situation relative to the other player (col. 6, lines 45-56). If the evaluating value programmed logic circuitry determines that the player is in a superior situation, the display area displaying said superior situation player expands relative to the display area displaying the defensive player (Fig. 4 and 8). In this instance, the evaluated value is whether a player is in an offensive situation, and, if yes, enlarging the display area relative to the display area of the opponent player. As interpreted by the examiner, "how well each player is doing in the game relative to the other players" is a measure of relative advantage of a player over another. In Suzuki, a player in an offensive position has an advantage over a player in a defensive position in that it is attacking the defensive player. Because successful attack maneuvers create a scoring and life meter advantage for the offensive player, the offensive player may be said to be "doing better than" the attacked, or defensive, player.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Oakes and Suzuki as both teach analogous multi-player video game inventions in the same field of endeavor (i.e. player entertainment). The inventions disclosed by Oakes and Suzuki are usable together, as the game of Suzuki may be implemented on the gaming system of Oakes without changing the respective function of either invention. That is, all of the claimed elements were known in the prior art and one could have combined the elements as claimed with no change in their respective functions, and the combination would have yielded predictable results to

one of ordinary skill in the art at the time of the invention.

Regarding claim 2, Suzuki discloses said screen partitioning programmed logic circuitry equally divides an area of said display area by said number of the participating players, wherein said size changing programmed logic circuitry changes the area of said divided areas of each player (Fig. 3,4,6 and 8).

Regarding claims 4, 5 and 8, Suzuki discloses said game image generating programmed logic circuitry generates a changed game image according to a size change of said divided areas by said size changing programmed logic circuitry (see Fig. 4 and 8, wherein the background images in the display area displaying the superior are adjusted to fill the expanded display area), thus changing a visual range.

Regarding claim 7, Oakes discloses the use of a video game machine connected to a common display and a plurality of hand-held game machines including a separate display connected to said video game machine (Fig. 1).

Regarding claim 15, in addition to claim 1 above, Suzuki discloses determining, as the game progresses, how each player is performing relative to the other players, based on game factors other than the size of a player's partition. That is, Suzuki discloses determining how well a player is performing based on whether they are in an offensive or defensive position. A first player who is beating a second player is the game, i.e. a first player who is currently attacking a second player in the game, is allocated a larger display screen partition than the second player.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oakes in view of Suzuki, and further in view of Kaneko et al. (US Patent 5,879,235; hereinafter Kaneko). Features are described by figures with reference characters where necessary for clarity.

Regarding claim 3, Oakes/Suzuki disclose a multi-player video game apparatus and system comprising screen partitioning capabilities for partitioning a common display screen into multiple display areas, each area displaying a participating player, and adjusting said display areas for each player in accordance with an evaluated value as described above.

Oakes/Suzuki does not specifically disclose the game apparatus further comprises a circular display area wherein said screen partitioning programmed logic circuitry equally divided said circular display area rendered by said number of the participating players in such a manner that each divided area is rendered by an angle that passes the center thereof, said size changing programmed logic circuitry changes a center angle of said divided areas of each player. Instead, both Oakes and Suzuki disclose rectangular-shaped display areas.

However, Kaneko discloses an analogous multi-player gaming system having a circular-shaped common display area, as shown in Fig. 1, capable of being divided into portions (the abstract discloses the game apparatus is configured for playing roulette, wherein it is notoriously well known that a roulette wheel is divided into multiple portions).

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the circular display area of Kaneko for the multi-player gaming apparatus of Oakes/Suzuki and doing so does not change the overall functionality of the game. That is, the shape of the player areas, whether rectangular or wedge-shaped, does not affect the outcome of re-sizing the display areas in accordance with an evaluated superiority or inferiority situation of a player. A larger rectangular-shaped area conveys the same indication of a player having a superior situation as a larger wedge-

shaped area and thus it would have been obvious to use either area shape.

Claims 6, 9, 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oakes in view of Suzuki, and further in view of Sciammarella et al. (US Patent 6,608,633; hereinafter Sciammarella). Features are described by figures with reference characters where necessary for clarity.

Regarding claims 6, 9, 10, 13 and 14, Oakes/Suzuki disclose a multi-player video game apparatus and system comprising screen partitioning capabilities for partitioning a common display screen into multiple display areas, each area displaying a participating player, and adjusting said display areas for each player in accordance with an evaluated value as described above.

Oakes/Suzuki does not specifically disclose end determining programmed logic circuitry for determining whether or not there is a player who ends the game out of the participating players, wherein said size changing programmed logic circuitry re-divided said display area by the number of the remaining players when determined by said end determining programmed logic circuitry that there is the player who ends the game, and determines a size of re-divided areas in accordance with how the remaining players are performing in the game relative to one another.

However, Sciammarella discloses a method and structure for the display of multiple fields of information to a user. A single display is split into multiple display areas, each display area featuring a field of information. The size of each display area is based upon the relative importance of the field of information displayed therein, such that the more important fields occupy larger display areas relative to less important fields. The result is that a user may readily discern the relative importance of each information field based upon the size of the display area, wherein importance may be

determined through the evaluation of a pre- selected factor including any of programming volume and/or frequency of use. For example, Fig. 8 displays multiple sports programming information fields in various display area sizes wherein the area sizes are determined by a selected measuring value such as length of program, frequency of use, volume of programming, etc. (col. 7, lines 6-22; col. 2, lines 27-47). This feature is analogous to display areas of differing sizes displaying game characters in accordance with some evaluated status of each character, as relative superiority or inferiority of a character's situation, i.e. how well a player is doing, may be equated with the relative "importance" of each character.

Further, Sciammarella discloses that the computer program operates to update the information displayed on the display screen in response to any changes detected in the selected measuring value (col. 3, lines 14-17). Thus, if the selected measured value is programming volume, i.e. how often a program is aired, then the most frequently shown programs would be displayed in the largest display areas of the screen. If a program is seldom or never aired, it would be removed from the display screen altogether and the remaining programs would fill the updated display.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Oakes/Suzuki with Sciammarella as all of the claimed components were known in the prior art and one skilled in the art could have combined the components with no change in their respective functions to produce a predictable result.

(10) Response to Argument

Claims 1-2, 4-5, 7-8, 11-12 and 15:

Appellant argues, with respect to claims 1, 7, 11-12 and 15, that the first, second and third embodiments of Suzuki do not teach change a size of a divided area of a screen dependent upon how well each player is doing in a game relative to other

players primarily because appellant states that the third embodiment teaches changing the size of the background picture based on the location of a moving object D, which appellant states is unrelated to whether the player is currently attacking or defending, and that the third embodiment teaches away from the above features by providing initiated objects that move irrespective of what a player does, and thus, irrespective of how well each player is doing in a game relative to other players.

Examiner acknowledges that appellant agrees that the third embodiment is the embodiment relied upon by the Examiner. Examiner acknowledges that appellant did not disagree with the limitation of "how well each player is doing in the game relative to the other players," which was interpreted by the Examiner to be a measure of relative advantage of a player over another. Examiner further acknowledges that appellant did not find unreasonable Examiner's prior reasoning that the offensive player, at the time of the attack, may be said to be "doing better than" the attacked, or defensive, player because successful attack maneuvers create a scoring and life meter advantage for the offensive player.

Thus, Examiner continues to submit that Suzuki teaches that a decision is made as to whether a player in an offensive position has an advantage over a player in a defensive position in that it is attacking the defensive player so as to affect the enlargement of a background picture regardless of whether it is possible for a strong defense to win (column 6, lines 45-56 and column 7, lines 17-23, Suzuki).

Examiner further submits that Suzuki teaches based on Examiner's interpretation above that the advantage of being in the offensive position is based on operations made by the player (column 3, line 66 to column 4, line 8 and column 6, lines 45-56 and column 7, lines 41-49, Suzuki). Examiner also submits that mere disclosure of a possible alternative device or method by the Suzuki prior art reference does not cause the additional use of the position of object D to teach away from other alternatives since Suzuki does not discourage the effect of screen enlargement as a result of the player being in an advantageous offensive position over a defensive position in accordance with the court holding in *In re Fulton* (See MPEP 2123 II. Nonpreferred and Alternative Embodiments Constitute Prior Art).

Hence, Examiner submits that no legal error exists since the above rejections take into account the prior art as a whole because the combination of Oakes and Suzuki is directed to analogous gaming devices that provide manipulation of screen displays, and do not merely take into account the differences between the features of Oakes and Suzuki.

Claim 3:

Appellant argues, with respect to claim 3, that Kaneko does not cure the deficiencies of Oakes alone or in combination with Suzuki cited by appellant above, and that the modified roulette table of Kaneko is not analogous to video games.

Examiner submits that the combination of Oakes and Suzuki is proper for the reasons described above and that the common display of the multi-player gaming system of Kaneko is analogous to the gaming displays of the gaming systems of Oakes and Suzuki since the Kaneko display has a circular-shaped common display area capable of being divided into portions (Fig. 1, Kaneko).

Claims 6, 9-10 and 13-14:

Appellant argues, with respect to claims 6, that Sciammarella does not cure the deficiencies of Oakes alone or in combination with Suzuki cited by appellant above.

Examiner submits that that the combination of Oakes and Suzuki is proper for the reasons described above.

Appellant argues, with respect to claims 9-10 and 13-14, that Sciammarella does not teach adjusting the size of a display based on whether a player does better or worse than another player in a game regardless of whether a entertainment channel or program of Sciammarella performs better than another, and that Sciammarella does not teach end determining programmed logic circuitry and re-partitioning programmed logic circuitry since appellant states that Sciammarella includes no players, thereby reasoning that a program or channel cannot be ended in the same way a video game can be ended by player participation.

Examiner submits that motivation for combining Oakes, Suzuki and Sciammarella is explicitly disclosed in the references, particularly in Sciammarella, which states that "the present invention has application in any environment or application in which a visual factor can be a useful measure of important categorical information", which would include a video game application (column 8, line 62 to column 9, line 5, Sciammarella). Examiner further submits that Sciammarella discloses that each section's "importance" may be determined by processor assessment of the frequency of use (i.e. how often it is watched by a user) under the control of program code resulting from user commands; and therefore, a section that is used more often by a user based on a particular category may be said to be "doing better than" a section that is used less often by a user based on a particular category, thereby providing that one or more users who use certain sections more often are "doing better than" users who use certain sections less often (Abstract, column 3, lines 14-19, column 3, line 65 to column 4, line 64 and column 7, lines 7-22 and column 8, lines 25-47, Sciammarella).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this Examiner's Answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Arthur O. Hall, Patent Examiner AU3714

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